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Defendants Michael Omid, M.D. and Julian Omid

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

COUNTERCLAIM DEFENDANTS
AMBULATORY SURGERY CENTER,
LLC, a California limited liability
company, et al.,

Plaintiffs,

v.

UNITEDHEALTH GROUP, INC.;
UNITED HEALTHCARE SERVICES,
INC., UNITED HEALTHCARE
INSURANCE COMPANY;
OPTUMINSIGHT, INC., and DOES 1
through 20,

Defendants.

UNITED HEALTHCARE SERVICES,
INC., UNITED HEALTHCARE
INSURANCE COMPANY;
OPTUMINSIGHT, INC.,

Counterclaim Plaintiffs,

v.

COUNTERCLAIM DEFENDANTS
AMBULATORY SURGERY CENTER,
LLC, a California limited liability
company; et al.,

Counterclaim Defendants.

) Case No. 2:14-cv-03053-MWF(AFMx)

)

) [Assigned to Magistrate Alexander

) MacKinnon]

)

) **DECLARATION OF DMITRIY**

) **ARISTOV IN SUPPORT OF**

) **COUNTERCLAIM DEFENDANTS'**

) **SUPPLEMENTAL MEMORANDUM**

) **PURSUANT TO LOCAL RULE 37-2.3**

) **RE: COUNTERCLAIM**

) **DEFENDANTS' MOTION TO QUASH**

) **SUBPOENAS DUCES TECUMS**

) **SERVED ON VARIOUS BANKS**

)

) Date: March 15, 2016

) Time: 10:00 a.m.

) Courtroom: H 9th Floor,

) 312 N. Spring Street

)

)

) Complaint Filed: March 21, 2014

) Trial Date: None Set

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1 I, DMITRIY ARISTOV ESQ, declare as follows:

- 2 1. I am over the age of 18 and I am an Attorney Licensed by the State of California,
3 State Bar #298467. The following facts are within my knowledge and if called
4 upon as a witness, I could and would competently testify hereto.
- 5 2. A review of the Summary Plan Descriptions “SPDs” provided by United reveal a
6 new issue upon which the Court has not ruled in this case. United’s subpoenas in
7 this matter are based on an effort to prove a right under the SPDs, and not under
8 the Plans themselves. An examination of the SPDs demonstrates United has no
9 right to issue the subpoenas because the subpoenas rely on SPDs and not the Plans,
10 the only enforceable documents. Contrary to United’s claim, Judge Fitzgerald has
11 never ruled these SPDs provided by United are Plan documents.
- 12 3. I have reviewed the language of the Summary Plan Descriptions and other
13 documents produced by United for this case and can attest to the following:
- 14 a. In the overwhelming majority of the SPD’s, the language itself purports to at
15 least the existence of an Official Controlling Plan Document outside of the
16 SPD. For example, similar to the SPD which was rejected as not being the
17 Plan document in *Prichard v. Metro. Life Ins. Co.*, 783 F.3d 1166 (9th Cir.
18 2015), in many Summary Plan Descriptions under “General Legal
19 Provisions”, the SPD’s state:
- 20 “This Summary Plan Description presents an overview of your
21 Benefits. In the event of any discrepancy between this Summary Plan
22 Description and the official Plan Document, the Plan Document shall
23 govern.” See EXHIBITS 1, 2, 3, 4, 5 attached herein.

24 Despite the majority of the Summary Plan Descriptions referring to an “official”
25 written “plan” document, the review of the discovery production shows that for the
26 majority of plans, no such “plan” document exists. The Plans that have been
27 produced by and large do not have the subrogation provisions that are alleged by
28 United to be in the SPDs.

- 1 b. Many of the SPD's are strikingly similar to each other despite being
2 represented to be from different Plans. As the Supreme Court explained in
3 *U.S. Airways, Inc. v. McCutchen*, 133 S. Ct. 1537 (2013), "a health-plan
4 administrator ... may bring suit under § 502(a)(3) for "appropriate equitable
5 relief ... to enforce ... the terms of the plan." *McCutchen*, 133 S. Ct. at 1544.
6 The court went on to emphasize specifically that an administrator's ability to
7 seek relief was strictly limited to enforcing the actual terms of the plan or the
8 ERISA statutes: "The section under which this suit is brought 'does not,
9 after all, authorize 'appropriate equitable relief' *at large*,' rather, it
10 countenances only such relief as will enforce '*the terms of the plan*' or the
11 statute, § 1132(a)(3). *Id.* at 1548 (emphasis original). The vast majority of
12 the United's SPD's have "contrary indications" which the Ninth Circuit in
13 *Prichard* ruled made them not Plan documents, *id.* at 1171, despite a
14 declaration from the Plan (IBM) stating that it was the plan. Given the
15 significant similarities of many of the hundreds of SPDs provided in
16 discovery by United, it appears that United, and not the Plan Sponsors, have
17 drafted these documents. United purports these SPDs represent "Plans"
18 though it appears United has drafted them given the extensive similarities.
19 *Colucci v. Agfa Corp. Severance Pay Plan*, 431 F.3d 170, 176 (4th Cir.
20 2005). ("[T]he administrator [United] is not free to alter the terms of the
21 plan"). Also, my review of United's discovery production indicates that the
22 vast majority of the SPDs have "contrary indications" as described in
23 *Prichard* and do not represent the terms of the Plans.
- 24 c. Language in the vast majority of the SPDs acknowledge the fundamental
25 difference between an SPD and the actual Plan. Specifically, in a number of
26 Summary Plan Descriptions, the language acknowledges the complexity of
27 the Plan language and its legal weight in determination of benefits.
28 Summary Plan Description for Whole Foods Market Group Benefit Plan,

1 explicitly states that:

2 “This SPD summarizes the main provisions of the Welfare Plan and
3 the Benefit Programs. It does not constitute the complete plan
4 document for any of the Welfare Plan or the Benefit Programs. **The**
5 **Welfare Plan and the Benefit Programs are represented by**
6 **separate plan documents, which are lengthy, complex legal**
7 **documents, and, in some cases, separate insurance contracts**, each
8 of which are available at the Plan Administrator's office for your
9 inspection. In case of any conflict between the provisions of the actual
10 plans and this SPD, the provisions of the actual plans will control.”
11 EXHIBIT 6, attached herein. (Emphasis added).

- 12 d. Such language similar to the above consistently appears in other SPDs
13 produced by United, even though they use differing words. For example, the
14 ADP Summary Plan Description for 2014 states:

15 “The full text of the Flex Plan is contained in legal documents. **Plan**
16 **documents govern the administration of our benefit plans and**
17 **contain more detailed information in explicit legal text.** These
18 documents are on file in the Corporate Benefits Department. If a
19 question should arise concerning the nature of these benefits the actual
20 legal document of the Plans will rule.” EXHIBIT 7, attached herein.
21 (Emphasis added).

- 22 e. Similar language appears in the following Summary Plan Descriptions:
23 Abbot Laboratories (See EXHIBIT 8) and the BOC Group. (See EXHIBIT
24 9), attached herein.
- 25 f. In addition by their very wording, the vast majority Summary Plan
26 Descriptions produced by United contain language that an official plan
27 documents exists.
- 28

1 4. In sum, my review shows that United's reliance on SPDs in its subpoena request
2 and not the Plans, renders the subpoenas invalid.

3 I declare under the penalty of perjury that the foregoing is true and correct. Executed this
4 1st day of March, 2016 at Los Angeles, California.

5
6 /s/ Dmitriy Aristov
7 Dmitriy Aristov, Esq.
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EXHIBIT 1

Summary Plan Description
Choice Plus Silver Plan
for
Stain Mart.

Group Number: 706344
Effective Date: January 1, 2011

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Section 9: General Legal Provisions

This section provides you with information about:

- General legal provisions concerning the Plan.

Plan Document

This Summary Plan Description presents an overview of your Benefits. In the event of any discrepancy between this Summary Plan Description and the official Plan Document, the Plan Document shall govern.

Relationship with Providers

The relationships between us, the Claims Administrator, and Network providers are solely contractual relationships between independent contractors. Network providers are not our agents or employees. Nor are they agents or employees of the Claims Administrator. Neither we nor any of our employees are agents or employees of Network providers.

We do not provide health care services or supplies, nor do we practice medicine. Instead, we pay Benefits. Network providers are independent practitioners who run their own offices and facilities. The credentialing process confirms public information about the providers' licenses and other credentials, but does not assure the quality of the services provided. Network providers are not our employees or employees of the Claims Administrator; nor do we

have any other relationship with Network providers such as principal-agent or joint venture. Neither we nor the Claims Administrator are liable for any act or omission of any provider.

The Claims Administrator is not considered to be an employer of the Plan Administrator for any purpose with respect to the administration or provision of benefits under this Plan.

We and the Plan Administrator are solely responsible for all of the following:

- Enrollment and classification changes (including classification changes resulting in your enrollment or the termination of your coverage).
- The timely payment of Benefits.
- Notifying you of the termination or modifications to the Plan.

Your Relationship with Providers

The relationship between you and any provider is that of provider and patient.

- You are responsible for choosing your own provider.
- You must decide if any provider treating you is right for you. This includes Network providers you choose and providers to whom you have been referred.
- You must decide with your provider what care you should receive.
- Your provider is solely responsible for the quality of the services provided to you.

The relationship between you and us is that of employer and employee, Dependent or other classification as defined in the Plan.

To continue reading, go to right column on this page.

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EXHIBIT 2

Summary Plan Description
Choice Plus PPO Plan
for
NEC Corporation of America
NEC

Group Number: 702172
Effective Date: April 1, 2011

Choice Plus Plan for NEC Corporation of America - 04/01/11

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We do not provide health care services or supplies, nor do we practice medicine. Instead, we pay Benefits. Network providers are independent practitioners who run their own offices and facilities. The credentialing process confirms public information about the providers' licenses and other credentials, but does not assure the quality of the services provided. Network providers are not our employees or employees of the Claims Administrator; nor do we

To continue reading, go to right column on this page.

have any other relationship with Network providers such as principal-agent or joint venture. Neither we nor the Claims Administrator are liable for any act or omission of any provider.

The Claims Administrator is not considered to be an employer of the Plan Administrator for any purpose with respect to the administration or provision of benefits under this Plan.

We and the Plan Administrator are solely responsible for all of the following:

- Enrollment and classification changes (including classification changes resulting in your enrollment or the termination of your coverage).
- The timely payment of Benefits.
- Notifying you of the termination or modifications to the Plan.

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- You are responsible for choosing your own provider.
- You must decide if any provider treating you is right for you. This includes Network providers you choose and providers to whom you have been referred.
- You must decide with your provider what care you should receive.
- Your provider is solely responsible for the quality of the services provided to you.

The relationship between you and us is that of employer and employee, Dependent or other classification as defined in the Plan.

To continue reading, go to left column on next page.

EXHIBIT 3

Summary Plan Description
Options PPO Base Plan
for
New Breed Corporate Services Inc.

Group Number: 701675
Effective Date: January 1, 2010

Options PPO Base Plan for New Breed Corporate Services Inc. - 01/01/10

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Section 9: General Legal Provisions

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- The timely payment of Benefits.
- Notifying you of the termination or modifications to the Plan.

Your Relationship with Providers

The relationship between you and any provider is that of provider and patient.

- You are responsible for choosing your own provider.
- You must decide if any provider treating you is right for you. This includes Network providers you choose and providers to whom you have been referred.
- You must decide with your provider what care you should receive.
- Your provider is solely responsible for the quality of the services provided to you.

The relationship between you and us is that of employer and employee, Dependent or other classification as defined in the Plan.

To continue reading, go to right column on this page.

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EXHIBIT 4

Summary Plan Description

Choice Plus Premium Plan

for

NCH Corporation

Group Number: 712762
Effective Date: January 1, 2010

Choice Plus Premium Plan for NCH Corporation - 01/01/10

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EXHIBIT 5

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SCI DOC ID

692434

Summary Plan Description

Choice

for

GARDA

Group Number: 705657
Effective Date: July 1, 2009

JRDEF00003000

Choice for GARDa - 06/01/09

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- You must decide with your provider what care you should receive.
- Your provider is solely responsible for the quality of the services provided to you.

The relationship between you and us is that of employer and employee, Dependent or other classification as defined in the Plan.

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EXHIBIT 6

Whole Foods Market Group Benefit Plan

Summary Plan Description

Updated effective September 2009

Capitalized terms used in this SPD will have the meaning given to them in this SPD. For your convenience, terms generally used throughout this SPD are defined in the Glossary of Defined Terms included in *Section 1, entitled General Information*. Nonetheless, certain capitalized terms used in one Section of this SPD may be defined differently when used in another Section. For your convenience, terms applicable to a particular Section of this SPD will be defined in a separate Glossary of Defined Terms included in that Section.

The words “we”, “us” and “our”, as used in this SPD refer to the Welfare Plan or the applicable Benefit Program. The words “you” and “your” refer to Participants in the Welfare Plan and applicable Benefit Programs.

Limitations of this Description

This SPD summarizes the main provisions of the Welfare Plan and the Benefit Programs. It does not constitute the complete plan document for any of the Welfare Plan or the Benefit Programs. The Welfare Plan and the Benefit Programs are represented by separate plan documents, which are lengthy, complex legal documents, and, in some cases, separate insurance contracts, each of which are available at the Plan Administrator’s office for your inspection. In case of any conflict between the provisions of the actual plans and this SPD, the provisions of the actual plans will control.

***IMPORTANT NOTICE FOR NON-ENGLISH SPEAKING EMPLOYEES**

ASISTENCIA EN IDIOMA ESPANOL

Este documento contiene un resumen en ingles de los derechos and beneficios que la corresponden bajo el plan de seguro de accidente

To continue reading, go to right column on this page.

grupalo creado y mantenido por su empresa. Si tiene alguna pregunta acerca de la informacion contenida en el documento, comuniquese con el Administrador para obtener ayuda.

La direccion del Administrador es:

Whole Foods Market, Inc.
Global Vice President of Team Member Services
550 Bowie Street
Austin, TX 78738
(512) 477-4455

AUXÍLIO ESTRANGEIRO DE LINGUAGEM

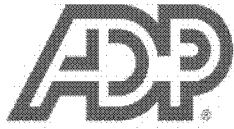
Este livreto contem um resumo em inglês de seus direitos ao Plano e benefícios. Se tem dificuldade de entendimento em qualquer parte deste livreto, contatar o especialista da folha de pagamento e Beneficio para auxílio.

ASSISTANCE DE LANGUE ÉTRANGÈRE

Ce livret contient un résumé en anglais des droits et des prestations de votre Plan. Si vous avez des difficultés pour comprendre une partie de ce livret, contactez le responsable local des salaires et des prestations pour assistance.

To continue reading, go to left column on next page.

EXHIBIT 7



IN THE BUSINESS OF YOUR SUCCESS®

Summary Plan Description



2014

Note: A spouse of a deceased associate who is deemed totally disabled under Social Security Disability during the three-year coverage period will have benefits extended through the length of the disability or to age 65, whichever occurs first.

How do My Dependents Pay for Extended Medical Coverage?

When they enroll for extended medical benefits and any benefits elected under COBRA/COBRA Coverage Equivalent, payment must be sent to arrive by the due date. **If coverage terminates due to non-payment of premiums, it will not be reinstated.** ADP reserves the right to change the amount it contributes toward medical coverage and the type of coverage provided at any time.

HIPAA Privacy

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) is a federal law that, in part, requires group health plans to protect the privacy and security of your confidential health information. The Medical, Dental, Prescription Drug, Vision, Health Care Flexible Spending Account, and the Limited Purpose Health Care Flexible Spending Account coverages under the Flex Plan are covered by the HIPAA privacy rules. Pursuant to the HIPAA privacy rules, as amended by the Health Information Technology for Economic and Clinical Health Act of 2009 ("HITECH"), the Flex Plan will not use or disclose your protected health information without your authorization, except for purposes of treatment, payment, health care operations, Plan administration or as required or permitted by law. A description of the Flex Plan's uses and disclosures of your protected health information and your rights and protections under the HIPAA privacy rules is set forth in the Flex Plan's Notice of Privacy Practices, which can be accessed on the Flex Plan's intranet site at <https://myadp.adpcorp.com>.

Your ERISA Rights – Health and Welfare Benefits under the Flex Plan

General Information

ADP believes in open communication with its associates in fair and equitable treatment concerning employment and compensation. In addition, under the Employee Retirement Income Security Act of 1974 (ERISA), you are entitled to certain rights and protections if you participate in any of the benefit plans described: Medical, Dental, Prescription Drug, Vision, Health Care Flexible Spending Account, Limited Purpose Health Care Flexible Spending Account, Long-Term Disability and Basic Life Insurance. (The proper name of each plan is contained in each section.)

Plan Continuation

ADP intends to continue the plans indefinitely, but reserves the right to amend or discontinue one or all of the plans with respect to all associates or specific classes of associates, at any time and for any reason. Any amendment or termination of a plan will be made by the Board of Directors of the Company, or by a person or persons designated by the Board of Directors. If you are affected by an amendment or termination of a plan, you will receive notice.

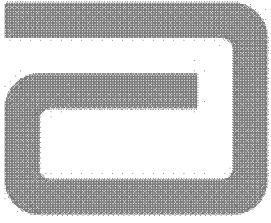
Plan Documents versus Guide

One of the primary purposes of the Summary Plan Description known as "Your ADP Benefits Guide" is to provide ADP associates with a clear, concise description of their benefits. ADP wants its associates to know the benefits and programs that are available to them, to understand the coverage, and to have information concerning the Flex Plan.

The full text of the Flex Plan is contained in legal documents. Plan documents govern the administration of our benefit plans and contain more detailed information in explicit legal text. These documents are on file in the Corporate Benefits Department. If a question should arise concerning the nature of these benefits, the actual legal document of the Plan(s) will rule.

The named fiduciary for the Flex Plan has the discretionary authority to determine eligibility under Flex Plan terms, to interpret and apply the terms and provisions of the Flex Plan, to resolve discrepancies and ambiguities, and to make final decisions on the appeal by a Flex Plan participant of an initial claim denial. A decision made by the named fiduciary will be final and binding on all parties.

EXHIBIT 8



UnitedHealthcare PPO Choice Plus

Summary Plan Description effective January 1, 2010

Este folleto contiene un resumen en Ingles de los derechos y beneficios del plan. Si tiene alguna dificultad en entender cualquier seccion de este folleto, puede comunicarse a nuestras oficinas de Beneficios (myHRTeam) al **(877) 228-4707** cualquier dia (Lunes a Viernes) dentro de 7 a.m. y 7 p.m. hora central.

For Abbott Laboratories Employees



Plan Changes

Abbott Laboratories expects to continue this plan but reserves the right to change or end it at any time. The Company's decision to change or end a plan may be due to changes in federal or state laws, the requirements of the Internal Revenue Code or ERISA or any other reason.

If a plan is ended, you will have no further rights under the plan other than the payments of benefits accrued before the plan was terminated. The Company in accordance with any applicable legal requirements will determine the amount and form of any final benefit you may receive.

If you have any questions about this statement or about your rights under ERISA, contact the nearest office of the Pension and Welfare Benefits Administration, U.S. Department of Labor or the Division of Technical Assistance and Inquiries, Pension and Welfare Benefits Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington D.C. 20210.

Plan Documents

This booklet describes highlights of the UHC PPO Choice Plus. It **does not attempt to cover all details. Its formal legal documents, rather than this summary, govern the plan in regard to administration and payment of all benefits.** In case of a conflict between this summary and the plan's legal documents, the plan's legal documents control.

EXHIBIT 9

CMS-SPD Scan Coversheet

Customer: The BOC Group
Type of Document: Family of Benefits Summary Book
Effective Date: 07/01/01
Author: United Healthcare
Policy Number: 184961
Number of Pages: 196

Document ID: 03724048

Document ID:



0 3 7 2 4 0 4 8

EOF

Document Scan Request: 10/09/2001 Property of UnitedHealthcare

JRDEF00083663

Plan Administration

This section contains information on the administration and funding of your plans, as well as your rights as a plan participant. While you may not need this information for day-to-day participation in your benefit plans, you should read through this section. It is important for you to understand your rights, the procedures you need to follow and the appropriate contacts you may need in certain situations.

Participation in any of the benefit plans sponsored by The BOC Group should not be viewed as a contract of employment.

Note: When the term "BOC" or "The BOC Group" is used, it is intended to include affiliated companies that have employees to whom the plan has been extended. You can request a complete list of employers who have adopted these plans by making a written request to the plan administrator.

Plan Documents

Complete details of each of the plans can be found in the plan documents, insurance contracts and trust agreements. Copies of those documents, the latest annual reports of applicable plans and the plan descriptions, as filed with the Internal Revenue Service and the U.S. Department of Labor, are available for review in your human resources department. If you need your own copy of a particular plan document, write to your human resources department. Copies of the document requested will be sent within 30 days at a nominal charge. In addition, once a year you will receive a copy of the summary annual report of each plan's financial activity at no charge. No summary annual report is required to be filed for the Severance Security Plan because these benefits are paid entirely from Company funds.